

# EXHIBIT

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Scott St John (public) &lt;j.scott.stjohn.public@gmail.com&gt;

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**CRT/Amendment to Special Master's Scheduling Order No. 1**

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**Scott St John (public)** <j.scott.stjohn.public@gmail.com>

Fri, Nov 6, 2015 at 4:41 PM

To: MARTIN QUINN &lt;mq1942@me.com&gt;

Cc: Francis Scarpulla <fos@scarpullalaw.com>, Josef Cooper <jdc@coopkirk.com>, "Lauren Capurro (Russell)" <LaurenRussell@tatp.com>, "emilio.varanini@doj.ca.gov" <emilio.varanini@doj.ca.gov>, "pbjusti@comcast.net" <pbjusti@comcast.net>, "jlwestfall.esq@gmail.com" <jlwestfall.esq@gmail.com>, "jscottstjohnpublic@gmail.com" <jscottstjohnpublic@gmail.com>, "andrea.valdez.esq@gmail.com" <andrea.valdez.esq@gmail.com>, "trhanigan@gmail.com" <trhanigan@gmail.com>, "cbandas@bandaslawfirm.com" <cbandas@bandaslawfirm.com>, "sampc01@gmail.com" <sampc01@gmail.com>, "jef@fortmanlaw.com" <jef@fortmanlaw.com>, "jckress@thekresslawfirm.com" <jckress@thekresslawfirm.com>, "lawchrist@gmail.com" <lawchrist@gmail.com>, Darrell Palmer <darrell.palmer@palmerlegalteam.com>, "rbonsignore@classactions.us" <rbonsignore@classactions.us>, Mario Alioto <malioto@tatp.com>, Bob Gralewski <bgralewski@kmlp.com>, Patrick Clayton <pbcc@scarpullalaw.com>, Tracy Kirkham <trk@coopkirk.com>, Sandra Chan <sbchan3171@gmail.com>, Marlo Cohen <marlojams@yahoo.com>, Theresa Moore <tmoore@alitolaw.com>

Counsel and Special Master Quinn:

On behalf of objector Douglas W. St. John, I respectfully continue to object to any modification of Scheduling Order No. 1.

**Background**

On October 9, 2015, the Special Master entered Special Master's Scheduling Order No. 1 providing for IPP Counsel's briefs in opposition to objectors to be due on November 6, 2015. IPP Counsel improperly sought discovery—apparently from every objector--and they relied on that November 6 deadline to insist on short-notice deposition dates, despite the resulting burden on objectors and their counsel.

At 8:52 p.m. Pacific Time the night before the deadline for their opposition papers, IPP Counsel presented the objectors with a fait accompli stipulation to alter Scheduling Order No. 1. The proposed dated would have substantially burdened counsel for the objectors, who not surprisingly objected to the stipulation. The Special Master responded to those objections by "ask[ing] Mr. Alioto to revise the schedule to give [counsel for objectors] additional time. He will try to present it to Judge Tigar today, or possibly Monday."

**Objection**

A scheduling order cannot be amended except upon a showing of good cause. Fed. R. Civ. P. 16(b); *see also, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992).

Here, IPP Counsel's sole rationale for amending Scheduling Order No. 1 is that "eleven objections to the requested attorneys' fees and approval of the proposed settlements have been filed, three of which were not filed with the Court until long after the October 8, 2015 deadline for objections (see Dkt. Nos. 4128, 4140, and 4144)." The last of those objections, D.E. 4144, was filed on October 26, 2015. IPP Counsel provide no reason why eleven days was not sufficient time to respond to that objection, nor did IPP Counsel timely seek to modify Scheduling Order No. 1 in view of that tardy objection. *Cf. Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080 (9th Cir. 2002) ("If the party seeking the

modification was not diligent, the inquiry should end and the motion to modify should not be granted.”); *Wingates, LLC v. Commonwealth Ins. Co. of Am.*, 21 F. Supp. 3d 206, 215 (E.D.N.Y. 2014) (attorney’s “heavy calendar” did not establish good cause for failing to meet deadlines). Indeed, the words “good cause” do not appear in IPP Counsel’s proposal to amend the scheduling order.

No good cause exists to modify Scheduling Order No. 1, and no order amending Scheduling Order No. 1 has been entered. Objector Douglas W. St. John therefore objects to any opposition filed after the November 6, 2015, deadline set in Scheduling Order No. 1, including any factual or expert testimony (including via declarations) developed after that deadline. To the extent the Court disagrees and concludes that there is good cause to modify Scheduling Order No. 1, Mr. St. John respectfully submits that such good cause exists only with respect to the three tardy-filed objections, not Mr. St. John’s timely-filed objection. Mr. St. John provides this objection to permit IPP Counsel to comply with Scheduling Order No. 1, and he reserves the right to file a formal objection pursuant to Appointment Order (D.E. 4053-1) § 5.

Finally, please note that Mr. St. John objects to any ex parte communication with the Court regarding this matter.

Very respectfully,

Joseph S. St. John

On Fri, Nov 6, 2015 at 12:10 PM, MARTIN QUINN <[mq1942@me.com](mailto:mq1942@me.com)> wrote:

Counsel: Thank you, but I am capable of creating a fair briefing schedule to recommend to the Court, in cooperation with class counsel, without holding a meeting or round of telephone calls.

Martin Quinn  
Special Master

MARTIN QUINN  
JAMS  
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415-774-2669  
[mq1942@me.com](mailto:mq1942@me.com)

On Nov 6, 2015, at 9:51 AM, Francis Scarpulla <[fos@scarpullalaw.com](mailto:fos@scarpullalaw.com)> wrote:

I also want to add my thanks, as well as to voice my agreement with Mr. Cooper’s suggestion. I would add that if Mr. Alioto does not confer on the schedule that he disclose that fact to the court and specifically inform the court of our request for such consultation.

On Nov 6, 2015, at 12:46 PM, Josef Cooper <[jdc@coopkirk.com](mailto:jdc@coopkirk.com)> wrote:

We also wish to thank you for your prompt attention to this matter. We respectfully suggest, however, that without the opportunity for all counsel to meet and confer about a schedule, anything that Lead Counsel does unilaterally may be subject to further objections by some or all of the counsel involved. We therefore re-submit our suggestion that the current schedule be vacated and all counsel be given the opportunity to communicate with each other and with you on the subject of scheduling the issues to be covered in your Report and Recommendations to the Court.

Josef Cooper and Tracy Kirkham  
Cooper & Kirkham, P.C.  
357 Tehama Street, Second Floor  
San Francisco, CA 94103  
[415-788-3030](tel:415-788-3030)

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From: MARTIN QUINN [[mq1942@me.com](mailto:mq1942@me.com)]

Sent: Friday, November 06, 2015 9:21 AM

To: Theresa Moore

Cc: Francis Scarpulla; Josef Cooper; Lauren Capurro (Russell); [emilio.varanini@doj.ca.gov](mailto:emilio.varanini@doj.ca.gov); [pbjusti@comcast.net](mailto:pbjusti@comcast.net); [jlwestfall.esq@gmail.com](mailto:jlwestfall.esq@gmail.com); [jscottstjohnpublic@gmail.com](mailto:jscottstjohnpublic@gmail.com); [andrea.valdez.esq@gmail.com](mailto:andrea.valdez.esq@gmail.com); [trhanigan@gmail.com](mailto:trhanigan@gmail.com); [cbandas@bandaslawfirm.com](mailto:cbandas@bandaslawfirm.com); [sampc01@gmail.com](mailto:sampc01@gmail.com); [jef@fortmanlaw.com](mailto:jef@fortmanlaw.com); [jckress@thekresslawfirm.com](mailto:jckress@thekresslawfirm.com); [lawchrist@gmail.com](mailto:lawchrist@gmail.com); Darrell Palmer; [rbonsignore@classactions.us](mailto:rbonsignore@classactions.us); Mario Alioto; Bob Gralewski; Patrick B. Clayton; Tracy Kirkham; Brian Torres; [j.scott.stjohn.public@gmail.com](mailto:j.scott.stjohn.public@gmail.com); Sandra Chan; Marlo Cohen

Subject: Re: CRT/Amendment to Special Master's Scheduling Order No. 1

Counsel.... you have been heard. I have asked Mr. Alioto to revise the schedule to give you additional time. He will try to present it to Judge Tigar today, or possibly Monday.

Martin Quinn  
Special Master

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On Nov 6, 2015, at 9:19 AM, Theresa Moore <[tmoore@aliotolaw.com](mailto:tmoore@aliotolaw.com)<<mailto:tmoore@aliotolaw.com>>> wrote:

During the course of this morning additional recipients have been added to the original email sent by Class Counsel. Thus I am copying my response sent early this morning to the current complete email recipient list of 23 recipients.

Regards,

Theresa Moore

Begin forwarded message:

From: Theresa Moore <[tmoore@aliotolaw.com](mailto:tmoore@aliotolaw.com)<<mailto:tmoore@aliotolaw.com>>>  
Subject: Re: CRT/Amendment to Special Master's Scheduling Order No. 1

Date: November 6, 2015 at 8:02:06 AM PST

To: "Lauren Capurro (Russell)" <LaurenRussell@tatp.com<mailto:LaurenRussell@tatp.com>>

Cc: emilio.varanini@doj.ca.gov<mailto:emilio.varanini@doj.ca.gov>, Fran Scarpella <fos@scarpullalaw.com<mailto:fos@scarpullalaw.com>>, jdc@coopkirk.com<mailto:jdc@coopkirk.com>, pbjusti@comcast.net<mailto:pbjusti@comcast.net>, jlwestfall.esq@gmail.com<mailto:jlwestfall.esq@gmail.com>, jscottstjohnpublic@gmail.com<mailto:jscottstjohnpublic@gmail.com>, andrea.valdez.esq@gmail.com<mailto:andrea.valdez.esq@gmail.com>, trhanigan@gmail.com<mailto:trhanigan@gmail.com>, cbandas@bandaslawfirm.com<mailto:cbandas@bandaslawfirm.com>, sampc01@gmail.com<mailto:sampc01@gmail.com>, jef@fortmanlaw.com<mailto:jef@fortmanlaw.com>, jckress@thekresslawfirm.com<mailto:jckress@thekresslawfirm.com>, lawchrist@gmail.com<mailto:lawchrist@gmail.com>, darrell.palmer@palmerlegalteam.com<mailto:darrell.palmer@palmerlegalteam.com>, rbonsignore@classactions.us<mailto:rbonsignore@classactions.us>, "Mario N. Alioto" <malioto@tatp.com<mailto:malioto@tatp.com>>, Bob Gralewski <bgralewski@kmlp.com<mailto:bgralewski@kmlp.com>>

Counsel-

I object to the Stipulation and Proposed Order requesting new dates and prefer to keep the dates as they are to avoid holiday and family conflicts. The new proposed dates, as well as the proposed dates with an additional week, are not workable, as I will be out of the country and unavailable on the proposed dates when work would be required.

Theresa

On Nov 5, 2015, at 8:52 PM, Lauren Capurro (Russell) <LaurenRussell@tatp.com<mailto:LaurenRussell@tatp.com>> wrote:

Dear Counsel:

Attached is a Stipulation and [Proposed] Order Amending the Special Master's Scheduling Order No. 1.

We received these dates from the Special Master today. The Special Master also indicated the Judge has approved these dates. The Special Master wants the stipulation to be filed as soon as possible given that briefs are currently due tomorrow. Therefore, we intend to file the attached stipulation at 2pm Pacific tomorrow.

Mario N. Alioto

Lauren C. Capurro (Russell)

Attorney at Law

Trump, Alioto, Trump & Prescott, LLP

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This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by e-mail and delete the message and any attachments.

<Stipulation & [Proposed] Order Amending Special Master's Scheduling Order No. 1.pdf>